

A requirement to publish in Scopus and the continental legal tradition: a contradiction?

Abstract. *The paper analyses a phenomenon of formal requirement and informal pressure posed on academic scholars and Ph.D. candidates with scientific interest of law in the Eastern European and central Asian countries to publish in Scopus-enlisted journals. Through the years, countries belonging to the so-called civil law legal tradition have developed a special role to play by academic scholars. However, these measures contradict the idea of Scopus. The paper looks for a possible balance between the approach resulting from the Scopus requirements and the one expected from legal scholars in civil law tradition countries, as the system of evaluation based on publications in Scopus-registered journals may be detrimental to national legal systems.*

Keywords: *Scopus, academic journal, legal tradition, civil law, academic scholars' evaluation.*

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Introduction

In this paper, the influence of the requirement and pressure to publish in journals enlisted on a Scopus list¹ for the legal sciences is analyzed. Continental legal traditions and their development will be considered. This paper aims to answer the question of whether internationalization and commercialization do not contradict the development of national, codified legal systems, and whether the described phenomenon of Scopus suits the goals that are specific to academic scholars in the domain of law.

Methodology

As this study is not a pure legal analysis, its methodology cannot be easily attributed to one of the traditional legal research methods. However, to show the broader perspective and context of the continental legal tradition in Europe, a comparative study must be conducted. On the other hand, as the aim of this

paper is to evaluate the requirement to publish in Scopus-enlisted journals, its relevance for academic scholars, and the quality of their work; finally, the impact of this phenomenon on the legal system and its development, and the costs—mostly social ones—have to be taken into consideration; hence, the tool allowing to reach such a goal is the use of the economic analysis of law.

Publish or perish in the Scopus-enlisted journals

In many Eastern European countries and also in central Asia, the requirement to have sufficient publications in Scopus-registered journals amounts to the most important achievements of academic scholars, necessary in different stages of the academic career, for the capability to review the Ph.D. thesis. Traditional degrees and academic honors lose their relevance in these countries, and without publications in the Scopus-enlisted journals, they are almost worthless.

¹Scopus describes itself as 'a source-neutral abstract and citation database curated by independent subject matter experts'; see Scopus Fact Sheet (2022), https://www.elsevier.com/___data/assets/pdf_file/0017/114533/Scopus-fact-sheet-2022_WEB.pdf, accessed: 1 June 2023.

The relevance of Scopus publications is not only a phenomenon of countries located in the eastern part of Europe or in Central Asia, but also, even much less extreme, in some Western countries. However, Germany, which is very important for shaping the European legal tradition, is completely unaffected by the charm of Scopus. The most relevant journals in legal sciences are not Scopus listed.² Most professors have Scopus publications randomly. From the perspective of their careers, it is completely meaningless.

In addition, our home country, Poland, remains outside of the strict Scopus requirement, although it is ranked in Scopus, which may help in the national credit system for scientific journals.³ However, the Polish model has flaws that are not free from political factors in the process of ranking scientific journals.⁴

It was not an accident that the countries of Eastern Europe and Central Asia were looking for an external system of academic evaluation. This need includes several factors related to the academic structure of these societies. The academic structure in Eastern Europe suffered from several serious problems with the system of academic appointments, the quality of academic writing, and insufficient transparency in the process of evaluating academics and their works.⁵ There was much information in academia. The national journals were often not reviewed, and sometimes their quality was not sufficient. Another factor was the need to force the national academic community to become more present in international academic discussions.

Hence, there was a natural process to try to overcome these deficiencies by forcing researchers to publish in journals listed in international lists. The idea was to rely on the review systems of the enlisted journals, their quality requirements, secured by the operator of the list who permanently monitors the journals on the list, whether the high standards are observed. This seemed to be the cheapest and most efficient way to achieve an improvement of academic standards without being forced to reform the whole working system. The requirement to publish in Scopus-enlisted journals has become a substitute for the necessary reforms in academia.

The need to publish in Scopus had a positive impact on the quality of national journals, seeking the privilege to find themselves on this list. Various formal requirements concerning journals, a need for internationalization, and establishing a peer-to-peer review system were important factors in setting new quality standards.⁶ However, the general pressure to publish only or predominantly in Scopus-enlisted journals has launched a number of problems, starting to influence not only the practice of academia, but also the entire legal system as such.

The task of the university in the continental legal system and the Scopus-requirement

With its discovery at the beginning of the second millennium, the Corpus Iuris Civilis started the age of the continental legal tradition (civil law tradition).⁷ There is a maxim that was formulated at the beginning of the movement

² E.g. Archiv für civilistische Praxis, Archiv für bürgerliches Recht, Juristische Zeitung, Neue Juristische Wochenschrift, Zeitschrift für Immobilienrecht.

³ They are necessarily listed on ministerial list and somehow privileged in a view to amount of points obtained by the author publishing. See Evaluation of the Quality of Scientific Activity – A Guide, prepared by the Team of the Polish Department of Science of the Ministry of Science and Higher Education, p. 45.

⁴ It is because of the points-based system of evaluation in which the amount of points for a publication in a particular journal depends on the ministerial decision; see Article 267 of Law on Higher Education and Science [Ustawa o szkolnictwie wyższym i nauce], OJ 2023 item 742 [Dz.U. 2023, poz. 742]. This competence has been abused; see M. Pawlik, Lub czasopisma... teologiczne, czyli dlaczego w nowej punktacji czasopism naukowych wygrywa KUL [Or journals ... theological, i.e. why KUL wins in the new scoring of scientific journals], OKO.press, 12 February 2021, <https://oko.press/lista-czasopism-wedlug-czarnka>, accessed 1 June 2023.

⁵ Which are rooted by the years of Soviet dominance which has shaped the universities.

⁶ See selection criteria available at <https://www.elsevier.com/solutions/scopus/how-scopus-works/content/content-policy-and-selection>, accessed 1 June 2023.

⁷ For more see A. Padoa-Schioppa, A History of Law in Europe, From the Early Middle Ages to the Twentieth Century, Cambridge University Press 2017, p. 73-76.

of the glossators: *quidquid non-agnoscit glossa, non-agnoscit curia*: what the comments to Roman law do not recognize, a judge does not recognize either.⁸ It is almost a founding sentence of the legal tradition on the continent. It stresses the essential role of legal science in the development of essential formants of the legal system. A distinctive feature of this legal tradition is that legal science, the university, is an important source of the shaping of law.⁹ This is a distinctive difference from the tradition of the common law. At US universities, the dominant way of running legal research is to focus on the law as a social phenomenon, which must be analyzed from the perspective of the impact that the law has on society.¹⁰ There is no task of legal science to explain and analyze the law as such, in the way that continental legal tradition is called a dogmatic method.¹¹ In the common law tradition, the development of law through its interpretation is the main task of the judiciary and not that of law professors. Of course, I am doing here a simplified generalization since the detailed picture is obviously much more sophisticated. The different roles of legal science are, however, an important and distinctive feature when analyzing the essential components of the composition of legal systems.

To properly function the continental legal system, it is necessary for universities and legal science to fulfill its function in relation to the national legal system. This observation limits the internationalization of legal science. Internationalization has an important objective in shaping a space for the broader exchange of thoughts, providing synergistic effects, and

a source of reciprocal inspiration. Through this comparison, one can achieve important input for better legislation.¹² These undeniable advantages of internationalization cannot replace the necessity of developing national dogmatic research on law and dogmatic discussion run in the national language of the state. A system for assessing the quality of research should not eliminate an essential formant of the continental system, depriving the system of law belonging to the continental legal tradition of one of its constituting pillars. At least such a fundamental decision must not be undertaken by the officials, seeking only a device for improvement of academic research, without having in mind what does it mean in the case of the legal sciences to the legal system itself.

The absolute requirement to publish (as permission for obtaining a degree or being a reviewer in the formal Ph.D. procedures) forces the researcher to neglect the need for publications in the national field.¹³ This forces researchers to publish mostly in English and the international public.¹⁴ This approach has severe consequences for the internal legal system. It leads to the reduction or in a critical development to the disappearance of the high-quality national legal writing. Such development has several essential consequences in the gradual flattening of the national legal debate, which also has a direct impact on international input from the respective country in the international debate.¹⁵ A real internationalization of the discussion requires researchers to be able to say something important. Being able to

⁸ The most significant work to which the maxim refers is *Glossa ordinaria*. For more see *ibid.*, p. 81.

⁹ J.M. Smits, *What Is Legal Doctrine? On the Aims and Methods of Legal-Dogmatic Research*, (2015) Maastricht European Private Law Institute Working Paper, n. 6, p. 10-11. An exceptional example of role of academical doctrine in shaping the existing law is the Polish Codification Committee [Komisja Kodyfikacyjna]; see F. Zoll, *O polskiej cywilistyce na stulecie polskiej niepodległości, czyli kilka uwag na temat geniuszu mrowiska* [On the Polish civil law doctrine for the centenary of Polish independence, i.e. some remarks on the genius of the anthill], (2020) *1 Państwo i Prawo*, p. 8-15.

¹⁰ See T.C. Grey, *Modern American Legal Thought*, (1996) *The Yale Law Journal*, vol. 106, p. 497-502. From this point of view interesting may be the results of survey on teaching techniques in American law schools published in the same year; see S.I. Friedland, *How We Teach: A Survey of Teaching Techniques In American Law Schools*, (1996) *Seattle University Law Review*, vol. 20, p. 20-25. These trends are reflected in the present-day shape of legal science in common law systems.

¹¹ See J.M. Smits, *fn. 9*, p. 13-16

¹² K. Zweigert, H. Kötz, *Introduction to Comparative Law*, Oxford University Press 2011, p. 16-17.

¹³ Scopus publications are important for the evaluation of the university and the scholar himself as he benefits from points accorded to Scopus-listed journals; see *Evaluation of the Quality of Scientific Activity – A Guide*, *fn. 3*, p. 45, 106.

¹⁴ See F. Zoll, *fn. 9*, p. 16.

¹⁵ To truly play a role and contribute in the international discussion one has to be an expert in his/her domestic law.

say something important requires a national discussion on the legal system to flourish. The real depth of the national legal dispute can be forged in the national language in the exchange of thoughts and concepts.¹⁶ Such discussions are typically of limited interest to the international community. It is naturally more interested in the results of such discussions, but it is unable to participate in the discussion itself. The internationalization of the dispute in the framework of the legal sciences is a very important factor for the healthy development of the national legal system.¹⁷ The balance between national scientific debate and internationalization must be sufficiently observed.

The pressure to publish in Scopus-ranked international law journals as practically the only way to be promoted or having a chance for an academic career destroys this balance and harms the development of national law and consequently the ability of the researcher coming from such a system to take part in the international debate. It is quite natural that to make an academic paper attractive to an international audience, another approach to the text is required, which is the case at the national level. The most common way to publish in the international journals the papers on the law in countries of the Eastern Europe or Central Asia is to make a kind of report on the certain legal area in the respective country.¹⁸ Such reports are undeniably useful

as sources of information, but their scientific value is limited. The facilitation to get a first glance at the legal system for foreigners not knowing the local language and the local circumstances.¹⁹ There are, however, also other papers that try to draw on the basis of the local system, more general conclusions being feasible to participate in international debate. The global impact of such texts should not be overestimated (there are, of course, important exceptions).²⁰ There are also papers on international and global laws. It is easier if the country is a member of a certain international organization, and it is natural that researchers from this country should take part in the debate concerning the supranational issues relevant to their country.²¹ Despite this, there is always the possibility of publishing papers belonging to the “law & something” art of research.²² It enriches the international and probably also a national debate, but cannot replace the core dogmatic analysis.

The costs of the monopoly

In the market of ideas, the creation of monopolies or duopolies always has a harmful impact. From the lawmaker’s perspective, it is not a good practice to pass legislation explicitly naming one or two businesses and providing lists of journals. It has launched a number of strange deformations on the market and conflicts of interest. A policy forcing publications only in listed journals run by

¹⁶ F. Zoll, fn. 9, p. 16-17. The question of language used is also a problem concerning advisability of comparative legal studies; see P. Legrand, *La comparaison des droits expliquée à mes étudiants* [Comparative law explained to my students] (in) *Comparer les droits, résolument* [Comparing the laws, resolutely], P. Legrand (ed.), PUF 2009, p. 214-216, 237-238.

¹⁷ The relevance of comparative studies was mentioned. Furthermore, general impact of internationalization of academic work should be indicated; see C. Kerr, *The Internationalisation of Learning and the Nationalisation of the Purposes of Higher Education: Two ‘Laws of Motion’ in Conflict?* (1990) 1 *European Journal of Education*, p. 10-12.

¹⁸ Such reports are present in the well-known *Journal of European Consumer and Market Law (EuCML)* which is not ranked on the Scopus either.

¹⁹ It is the aim of the books comparing transposition of European Union’s directives in the member states; see e.g. *European Product Liability. An Analysis of the State of the Art in the Era of New Technologies*, P. Machnikowski (ed.), Intersentia 2016.

²⁰ Important may be the ones trying to deal with issues which arise in parallel in different countries, while the way of dealing with them differs. Interesting example – as it is a phenomenon characteristic for the Eastern European countries out of the Euro zone – concerns the foreign currency loans. In search for a best solution see Part 2 in *Protecting Financial Consumers in Europe*, P. Tereszkiewicz, M. Golecki (eds.), Brill 2023.

²¹ The most obvious example is the European Union, where academic debates engage scholars from several member-states as the problems cannot be solved otherwise than on the supranational level. That was the case for the platform economy; see Ch. Busch, H. Schulte-Nölke, A. Wiewiórowska-Domagalska, F. Zoll, *The Rise of the Platform Economy: A New Challenge for EU Consumer Law?*, (2016) 1 *EuCML*, p. 3-10.

²² On the possible co-disciplines see R.A. Posner, *The Decline of Law as an Autonomous Discipline*, (1987) *Harvard Law Review*, vol. 100, p. 767-769. See also J.B. Baron, *Law, Literature, and the Problems of Interdisciplinarity*, (1999) *The Yale Law Journal*, vol. 108, p. 1084-1085.

the companies explicitly named by law,²³ has created an unhealthy market for publications. Researchers are forced to pay for the possibility of publication of an essential amount of money.²⁴ It forces the creation of authors' cooperatives based on their financial ability, not necessarily on academic competences. This does not mean that the journals listed on the list are the most important journals in a given area of law. Leading German,²⁵ Polish,²⁶ or even French²⁷ journals are not listed on these indexes which are often required by the legislation of the countries of the region. The real impact of this research on internationalization is limited. It is difficult to accept the idea that a researcher must pay for publication in a journal. In the majority of the journals in Western Europe, the publications are for free (it is a little different from monographs – sometimes the publishers require participation in costs).²⁸ The cost of such publications in listed journals has a prohibitive effect. The fact that not many journals are really interested in texts from the region raises prices to an inappropriate level. The reason for this is the lack of a reasonable system in each country.

Unnecessary burden on the Ph.D. students

A requirement to publish an article to be admitted to the Ph.D. exam or defense exists in Poland (but it does not need to be a "Scopus" journal),²⁹ but not in Germany. However, this was not a reasonable requirement. The Ph.D. dissertation itself should prove that a young scholar is able to conduct autonomous research

and produce innovative results. A requirement for publication in one of the listed journals (on the lists of the private companies, required by law) questions the ability of the own system to evaluate this achievement. If the system is not reliable, it must be revised, but it should not distract the candidates from the full focus on preparing the Ph.D. work. Such a burden should not be financial.

Conclusions: From the formal assessment to the real evaluation

The parametrization of academic research is an understandable reaction to various abuses of academic freedom, systems of academic appointment, corruption, and so on. It is an attempt to increase the quality of academic performance without reshaping the system of academic career and systems of assessment of achievements. It is also an attempt to bring about an external, foreign perspective. However, the results were not satisfactory. Definitely, the requirement to be accepted by recognized lists has a positive impact on the quality of the journals. A key to reform the system lies in the transparent process of academic appointments on a competitive basis, and substantial and not only a formal assessment of the academic record of the candidates. The law should provide certain quality requirements for journals (e.g., independent peer-to-peer review), but the organization of such journals should also be a task of academia, providing free access to them. A country should encourage, with all available, academic debate on law.

²³ It is a case for Poland even if not all journals are Scopus-enlisted and monopolistic tendencies are broken by the universities' journals financed with public funds; cf. fn. 4 and see List of Scientific Journals and Peer-Reviewed Proceedings of International Conferences [Wykaz Czasopism Naukowych i Recenzowanych Materiałów z Konferencji Międzynarodowych] available at <https://www.gov.pl/web/edukacja-i-nauka/nowy-rozszerzony-wykaz-czasopism-naukowych-i-recenzowanych-materialow-z-konferencji-miedzynarodowych>, accessed 1 June 2023.

²⁴ In the form of so-called Article Processing Charges (APC) allowing an open access publication; see G. Beasley, Article processing charges: A new route to open access?, (2016) 36 Information Service & Use, p. 164-165. However, for many scholars – regardless of their field of research – such charges may be the barrier for publishing and developing their academic career; see V.K. Jain, K.P. Iyengar, R. Vaishya, Article processing charge may be a barrier to publishing, (2021) 14 Journal of Clinical Orthopaedics and Trauma, p. 14-16.

²⁵ See fn. 2.

²⁶ E.g. Kwartalnik Prawa Prywatnego, Monitor Prawniczy, Przegląd Prawa Handlowego, Przegląd Sądowy, Studia Prawa Prywatnego, Transformacje Prawa Prywatnego.

²⁷ E.g. Gazette du Palais, Recueil Dalloz, Revue trimestrielle de droit civil.

²⁸ See e.g. for the publisher of our maternal Jagiellonian University, <https://wuj.pl/dla-autorow/wysluj-prosbe-o-kalkulacje>, accessed: 1 June 2023.

²⁹ See Article 186 para. 1 pt. 3(a) of Law on Higher Education and Science [Ustawa o szkolnictwie wyższym i nauce], OJ 2023 item 742 [Dz.U. 2023, poz. 742]. However, it may be a Scopus-listed journal.

The essential improvement of quality must first happen domestically because it creates solid fundamentals for participation in international debate. There are thousands of highly recognized law journals in the world that are not ranked in privately run lists or registers. In legal sciences, in the continental legal tradition, an important role plays in publications in the form of commentaries or other books that are also not included in the system.³⁰ Therefore, quotation indexes in legal sciences often do not reflect the real position of a researcher in the domain of law.

Prestige should be built up by real and non-registered quality. If there is a need

to supervise the quality of journals, there should be a list of requirements that should be fulfilled, but not referring to the registers run by private companies with their own specific interests. The key is the organization of academia with a transparent and competitive process of recruitment. Every system must support a high-quality national discussion of the law. The results of this discussion enrich international discussion and produce useful international feedback. However, this process cannot be reversed. At present, this is unfortunately the case in many countries of Eastern Europe and Central Asia.

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³⁰ The form of commentaries and systems (series describing the legal system as a hole) is particularly present in Germany and Poland, but is not used e.g. in France. On the importance of those forms see M. Grochowski, Komentarze do kodeksu cywilnego. Ewolucja – tożsamość – perspektywy [Commentaries on the Civil Code. Evolution – identity – perspectives], (2022) 4 Kwartalnik Prawa Prywatnego, p. 614-627. The relevance of the commentaries in the continental legal tradition is proved by its use for explanation of academical supranational model rules and legislative proposal; see e.g. Principles, Definitions and Model Rules of European Private Law: Draft Common Frame of Reference (DCFR), C. von Bar, E. Clive (eds.), Sellier 2009; Discussion Draft of a Directive on Online Intermediary Platforms. Commentary, Ch. Busch, G. Dannemann, H. Schulte-Nölke, A. Wiewiórowska-Domagalska, F. Zoll (eds.), Jagiellonian University Press 2019.

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Scopus-та жариялау талабы және континенттік құқықтық дәстүр: қарама қайшылық?

Аңдатпа. Мақалада Scopus деректер базасына енгізілген журналдарда жариялау үшін Шығыс Еуропа және Орталық Азия елдеріндегі құқық саласында ғылыми қызығушылықтары бар академик ғалымдар мен PhD докторларына ресми талаптар мен бейресми қысым феномені талданады. Жылдар өте өркеніетті құқықтық дәстүрге жататын елдерде академик ғалымдар ерекше рөл атқара бастады. Алайда, бұл шаралар Scopus идеясына қайшы келеді. Мақалада Scopus талаптарынан туындайтын тәсіл мен азаматтық-құқықтық дәстүрі бар елдердегі заңгер ғалымдардан күтілетін тәсіл арасындағы ықтимал теңгерім қарастырылады, өйткені Scopus-та тіркелген журналдардағы жарияланымдарға негізделген бағалау жүйесі ұлттық құқықтық жүйелерге зиян келтіруі мүмкін.

Түйін сөздер: Скопус, академиялық журнал, құқықтық дәстүр, азаматтық құқық, ғалымдардың көз-қарасы.

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Требование публикации в Scopus и континентальная правовая традиция: противоречие?

Аннотация. В статье анализируется феномен формального требования и неформального давления на академических ученых и PhD докторов с научными интересами в области права в странах Восточной Европы и Центральной Азии для публикации в журналах, включенных в базу Scopus. С годами в странах, принадлежащих к так называемой цивилистической правовой традиции, особую роль стали играть ученые-академики. Однако эти меры противоречат идее Scopus. В статье рассматривается возможный баланс между подходом, вытекающим из требований Scopus, и подходом, ожидаемым от ученых-правоведов в странах с традициями гражданского права, поскольку система оценки, основанная на публикациях в журналах, зарегистрированных в Scopus, может нанести ущерб национальным правовым системам.

Ключевые слова: Скопус, академический журнал, правовая традиция, гражданское право, оценка ученых.

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